

IN THE MATTER OF the Sale and Supply of Alcohol Act
2012

AND

IN THE MATTER OF an application by **Southpaw Brewing
Company** for a Special Licence
pursuant to s.138 of the Sale and
Supply of Alcohol Act 2012 in respect
of premises situated at, **160 Estuary
Road, Christchurch**, known as **South
Brighton School – Twilight Fair**

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson : Ms C E Robinson
Members: Mr D Ivory
Mrs M Redstone

DECISION ON APPLICATION FOR SPECIAL LICENCE

[1] This is an application by Southpaw Brewing Company ('the applicant') for a Special Licence under s138 of the Sale and Supply of Alcohol Act 2012 ('the Act') in respect of premises situated at 160 Estuary Road, Christchurch, known as South New Brighton School. A Special Licence has been applied for to operate a stall selling beer and Pims by the glass to those attending a Twilight School Fair and an off-licence component to sell beer refills of customer supplied 'riggers' to take away for consumption off site.

[2] The event is described as a school fundraiser and community event. It is not ticketed, and members of the public are able to attend the event. The purpose is described by the Inspector as being a community gathering for the community to come together at the start of the year and share food and enjoy music. A defined food area is provided with offerings from various food trucks as shown on the site plan attached to the application. As part of the hospitality the applicant wishes to occupy a small area at one end of the food truck area and provide beer or Pimms mixed drinks by the glass. The applicant also holds a Special Licence

to operate at a nearby local community market on Friday nights on the corner of Estuary and Bridge Streets in South Brighton which includes an off licence to allow customers to refill 'riggers' with beer for consumption off site. The application for the School Fair includes an off licence to refill riggers with its product for consumption off site. The number of people attending the event is said to be about 100 -150, although it is open to the public so it could well be considerably more. The event is advertised in the flyer provided by the applicant as being from 4.30pm to 8pm. The applicant seeks a licence between 4pm and 9pm.

[3] The applicant will have a qualified duty manager in attendance.

[4] The NZ Police did not raise any opposition to the application. The Inspector has filed an Initial Report and a Supplementary Report and recommends that the Committee grant of the application subject to conditions.¹

[5] It is noted that the initial Inspector's Report stated that the Medical Officer of Health (MOH) was not reporting on the application and could be taken as having no matters in opposition. However, when the file was provided to the Committee, we identified that there was a letter of opposition filed on behalf of the MOH. The Inspector explained in a Supplementary Report that there had been an administrative error and her Initial Report was forwarded to the Committee before she had a chance to update her report to record the MOH opposition. Due to the initial error the file was not referred to the Committee as one requiring consideration by a quorum of three Commissioners and so it was not included on the weekly District Licensing Committee meeting agenda for decision on Wednesday 17th February. The application and Reports were put before the Committee at its meeting on the 24th of February. Three Commissioners were then appointed to determine the application.

[6] Notwithstanding this administrative error, it is noted that the Agency reporting timeframes meant that even if the application had been before us on the 17 February 2021 and assuming that we had granted it, a licence would not be in effect in time for the event on 26 February 2021 in accordance with s152 of the Act.

[7] We have however assessed the application on its merits, in light of the reported opposition from the MOH.

¹ Inspector's Report, Anneke Lavery, 16th February 2021 and Supplementary Report, 24 February 2021.

[8] The Medical Officer of Health (MOH) has opposed the application as is their practice to do so for school events where children are present. In a letter to the DLC on 15th February 2021 Alcohol Licensing Officer Ms Paula Williams on behalf of Dr Cheryl Brunton, Medical Officer of Health has noted the concerns and research regarding the exposure of children to alcohol and the recommendations of the Ministry of Education regarding school events. Ms Williams references the earlier decision of this DLC and decision of ARLA in *Dr A Humphries v Cathedral Grammar* [2019] NZARLA 91.

[9] The MOH opposes the application in the knowledge that the Committee may determine not to convene a hearing and may determine the application on the papers with a full quorum of three.²

[10] A Committee of three commissioners has been convened and has considered the opposition from the MOH. It is our view that the MOH has not raised any new matters relating to the substantive application which have not already been fully canvassed by the DLC during the Cathedral Grammar case. The sale and consumption of alcohol at an event where children are present does not make it inherently inappropriate. We are however required to give consideration to the merits of individual applications in accordance with the law, which we do so below. The opposition from the MOH does not require us to convene a hearing in our view and we have proceeded to consider the application 'on the papers'.

[11] There are differences to the Cathedral Grammar school community event. They are:

- (a) This is a School Fair and fundraiser open to the public, not just the school community.
- (b) This application is made by the stall holder intending to sell alcohol not the PTA or School Board. It is however clearly part of the School Fair event and as far as we are aware the only stall selling alcohol.
- (c) The application includes an off licence to refill 'riggers' supplied by customers to consume off site. There is some uncertainty as to whether this is offered to just those attending the event or available to the wider public (who might not attend the event but wish to purchase beer for offsite consumption).

² Section 202 and 191(2) of the Act.

- (d) The event is for 3.5 hours, although the licence application is for a 5-hour period.
- (e) There is no Alcohol Management Plan provided. The applicant will advise customers to consume alcohol within the demarked food truck area and not to consume alcohol from the refilled riggers at the Fair.
- (f) The applicant is experienced and holds a duty managers certificate.

[12] We are concerned that the application for a special licence appears to be stand alone without any real coordination or relationship with the balance of the event. The Inspector has indicated to us that the off-licence component will be marketed to existing clientele who may be at the event but could be members of the public who take an opportunity to visit the site to purchase beer for offsite consumption.

Evaluation

[13] Section 142 of the Act sets out the criteria for determining an application for a special license. In addition to the object of the Act we are required to have regard to matters pertaining to the nature of the event, other goods and services on offer, the suitability of the applicant, effects on amenity and good order, the day and timing of the event, the design and layout of the premises, any training and steps undertaken to ensure compliance with the Act and provision of food, low alcohol and non-alcoholic drinks, information about transport and matters raised in the agency reports. The matters we are to have regard to follow those for on and off licenses pursuant to s105 of the Act. Our approach is the same.

[14] The applicant is suitable and experienced, appropriate systems are in place to ensure compliance with the Act and there is a substantial food offering as part of the wider event co located with the stall. The applicant is providing free soft drink and water is available. The required signage will be in place. The Games area directed at children is located well away from the applicant's stall and the Inspector has indicated that there are no concerns regarding amenity. A condition requiring the minimising of noise from the event is recommended by the Inspector. We address the hours of the licence below and have limited the duration of the licence with agreement from the applicant.

The object of the Act.

[15] The Object of the Act is as follows:

Object

(1) The object of this Act is that—

(a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and

(b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—

(a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and

(b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[16] There are two arms to the Object of the Act, and both must be met. In terms of the first arm, we need to be satisfied that the sale and supply of alcohol by the applicant should be undertaken safely and responsibly. We are satisfied that with conditions regarding the duration of the event, limiting the consumption of alcohol to the area marked on the site plan as ‘Food Trucks’ and restricting the sale of beer in refilled ‘riggers’ for consumption off site to those attending the event and preventing its consumption on site coupled with the experience of the applicant will ensure that the sale and supply of alcohol should be undertaken safely and responsibly.

[17] The second arm requires that harm caused by excessive or inappropriate consumption of alcohol should be minimised. ‘Minimised’ means reduced to the smallest amount, extent or degree. It does not mean eliminate altogether.³ In *Medical Officer of Health v Lion Liquor Retail Limited*, Clark J held that:

“the legislative framework enacted by the 2012 Act was intended to restrict rather than relax drinking laws. The legislative measure proceeded on the basis of clear evidence showing a link between availability of alcohol and alcohol-related harm.”

[18] Our role is an evaluative one, and we need to have regard to the extent to which granting a licence with conditions should minimise alcohol related harm.⁴ There is a presumption built

³ See Shorter Oxford Dictionary; *Re Peony Spirits Limited* [2014] NZARLA 696 at [19]; *Linwood Food Bar Ltd v Davison* [2014] NZHC 2980 at [18] and *Auckland Medical Officer of Health v Birthcare Auckland Limited* [2015] NZHC 2689 at [115].

⁴ Alcohol related harm is defined in s5 to mirror that in s4(2) of the Act.

into the Object of the Act that excessive or inappropriate consumption of alcohol causes harm i.e., harm caused by *excessive or inappropriate* consumption of alcohol.

[19] 'Harm caused by excessive or inappropriate consumption' is defined broadly in s4(2) to include harm in the form of crime, damage, disorderly behavior, illness or injury to individuals and to society generally and includes direct and indirect cause or contribution to harm.

[20] We find this to be a family focused school community event. The event is over a 3.5-hour duration and the consumption of alcohol by the glass on site appears to be an incidental accompaniment to the event.

[21] The original application requested a licence for an additional 1.5 hours (half an hour before and one hour after the advertised event). We raised a concern regarding the duration with the Inspector and the applicant and the applicant has since confirmed agreement to limit the hours to those of the advertised event plus a half hour 'drink up' time at the conclusion of the event.⁵

[22] The information we have before us on the off-licence sales gives us some cause for concern as the information tends to suggest that the off-licence is not limited to those persons attending the event (the school fundraiser and community event) but is also directed at wider clientele who would visit the School to refill their riggers. This appears contrary to the requirements of s22(5) of the Act which provides:

On the premises a special licence designated as an off-site special licence is held for, the licensee can sell the licensee's alcohol, for consumption somewhere else, to people attending an event described in it.

[23] We propose a specific condition to make it clear that the off-licence component is only available to those attending the event and not to the wider public or applicant's clientele who simply wish to take advantage of the applicant's location at the School Fair. With that condition and conditions restricting consumption of alcohol to beer or Pimms purchased by the glass and consumed within the food truck area we are satisfied that the second limb of the object is met. The applicant has agreed to those conditions.⁶

⁵ Email request from the DLC and response from Hearings Advisor confirming applicant volunteered conditions, 25 February 2021.

⁶ *ibid*

Decision

Having had regard to the matters in s142 of the Act we find that granting the application subject to conditions is consistent with the object of the Act and grant the licence accordingly.

The Licensed Premises

- (a) This special licence authorises the sale, supply and consumption of alcohol within the part of the premises identified on the site plan attached to and forming part of this licence as the 'Food Truck' area.

Compulsory conditions – section 147(3)

- (b) Alcohol may only be sold under the licence on the following days and during the following hours:

Friday 26th February 2021 from 4.30pm to 8.30pm.

- (c) Drinking water will be freely available on the premises as specified in the application.

Discretionary conditions – section 147(1)

- (d) The licence holder must display appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (e) Food must be available for consumption on the premises as specified in the application.
- (f) Low-alcohol beverages must be available for sale and supply on the premises as specified in the application.
- (g) Non-alcohol beverages must be available for sale and supply on the premises as specified in the application.
- (h) The licensee must provide assistance with or information about alternative forms of transport from the premises as specified in the application.
- (i) A copy of the licence as well as age restriction signage must be clearly displayed.

- (j) The event is open to members of the public to attend.
- (k) Only the following kinds of alcohol may be sold or delivered on or from the premises: The applicant's own product.
- (l) Alcohol must only be sold, supplied and consumed within the area marked on the plan as the Food Truck area as submitted with the application.

The licence is also subject to the following conditions, which in the Committee's opinion are not inconsistent with the Act:

- (m) Noise should be controlled so as not to disturb neighbouring residents.
- (n) The sale of beer in refillable riggers for consumption off site is restricted to persons attending the event and not to the general public.
- (o) Alcohol sold by the glass shall only be consumed within the area marked as 'Food Trucks' on the site plan attached to the application.
- (p) Alcohol sold in 'refilled' riggers shall not be consumed on the site.
- (q) The sale of alcohol for consumption on site shall cease at 8pm.

[24] The applicant's attention is drawn to s 259 of the Act which makes it an offence to not comply with certain requirements and restrictions imposed by or under the Act.

DATED at CHRISTCHURCH this 25th day of February 2021



Cindy E. Robinson
Chairperson of the Christchurch District Licensing Committee